Bail Slip

The Accused namely viz.K.Dhanapal (Appellant) was directed to be released on bail by the order of this Court 8.6.2000 and made in Crl.M.P.No.1476/2000 in CA No.243 of 2000.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 09.03.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.A.No.243 of 2000

K.Dhanapal .. Appellant/Accused

vs.

The State,
rep by the Inspector of Police,
Coonur Police Station,
Nilgiris District.
(Cr.N.92/1998) ..
Respondents/Complainant

Prayer: This appeal has been preferred against Judgment dated 24.02.2000, in S.C.No.24 of 1998 on the file of the learned Sessions Judge, Nilgiris at Udagamandalam.

For Appellant : Mr.P.Suresh
For Respondent : Mr.V.R.Balasubramanian
(Addl. Public Prosecutor)

JUDGMENT

This appeal has been preferred against the Judgment in S.C.No.24 of 1998 on the file of the learned Sessions Judge, Nilgiris at Udagamandalam.

2. The short facts of the prosecution case relevant for the purpose of deciding this appeal are as follows:-

On 08.02.1998 at about 6.15. pm due to previous enmity the accused had inflicted injury on the neck of P.W.2-Ravichandran with a barber's razor causing simple injury and in the course of the occurrence had also pushed P.W.1 on the ground thereby causing simple injury to him. The case was taken on file by the learned Judicial

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Magistrate, Coonur and registered as PRC.No.4/1998. On appearance of the accused on summons, the learned Judicial Magistrate furnished copies under Section 207 of Cr.P.C. and since the case is triable only by the Court of Sessions, the learned Judicial Magistrate has committed the case to the Court of Sessions under Section 209 of Cr.P.C. The learned Sessions Judge has framed charges under Section 307 and under Section 323 IPC and when the accused was questioned he pleased not guilty. The prosecution has examined P.W.1 to P.W.10 and marked Ex.P.1 to Ex.P.14 and M.O.1 to M.O.3.

3. P.W.1 is an injured witness. According to P.W.1 on 8.2.1998 while he was returning to his home along with P.W.2 from Willington at about 6.30 pm the accused came from the opposite direction and picked up quarrel with P.W.2 and that he(P.W.1) intervened and tried to pacify the accused and at that time the accused pushed him on the ground thereby causing simple injury and when P.W.2 questioned about this the accused went inside a barber's shop owned by one Easwaran (P.W.5) and took a razor from the shop and caused injury on the neck of P.W.2. After inflicting the injury the accused had ran away from the scene occurrence and that he along with Murali took the injured Ravichandaran to the Government Hospital, Coonur, where he was admitted as an inpatient and that he had preferred a complaint-Ex.P.1 with the police.

3. P.W.2-Ravichandran would corroborate the evidence of P.W.1 in respect of the date and time of the occurrence. He would depose that at the time of occurrence the accused had pushed P.W.1 on the ground and that P.W.1 had sustained a simple injury on the left index finger due to the fall and when questioned about the said incident the accused criminally intimidated by saying that only if P.W.2 is killed he (P.W.2) will not interfere in such matters and also used abusive language against P.W.2 and immediately the accused went inside the barber shop and took out a barber's razor and inflicted injury on the left side of his neck and that he also made an attempt to cause incised wound on his stomach but he could not succeed in the attempt. Due to the said attempt his shirt was torn. After committing the crime the accused ran away from the scene of occurrence. P.W.2 would admit that the accused had also sustained injury near the left eye at the time when he tried to prevent the accused from making any assault on him. He has also identified M.O.1 as the barber's razor used by the accused at the time of occurrence and that M.O.2-blood stained shirt & M.O.3-blood stained banian are his wearing apparels.

4. P.W.3-Murali is an ocular independent witness to the occurrence. He is a lorry driver by profession. He would corroborate the evidence of P.W.1 and P.W.2 in respect of the push of P.W.1 by the accused as well as inflicted injury with a barber's razor on the neck of P.W.2. He has also identified M.O.1 as the barber's razor

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used by the accused at the time of occurrence to cause injury on the neck of P.W.2. He would depose that Investigation Officer has visited the scene of occurrence and prepared Ex.P.2-mahazar in his presence and also seized M.O.2 & M.O.3 wearing apparels from P.W.2.

5. P.W.9 is the then Sub-Inspector of Police, Coonur Police, who after receiving the information through wireless proceeded to the Government Hospital, Coonur, and recorded the statement regarding the occurrence from P.W.1. Ex.P.2 is the statement of P.W.1. On the basis of the complaint he had registered a case against the accused under Crime No.92/1998 under Section 307 IPC. Ex.P.8 is the FIR. He has examined P.W.1 and P.W.2 and recorded their statements under Section 161(3) of Cr.P.C. and he has also seized M.O.2 & 3, blood stained shirt and banian respectively, from P.W.2 in the presence of P.W.3. Thereafter, P.W.9 had proceeded to the scene of occurrence and prepared Ex.P.3-observation mahazar in the presence of P.W.3 & P.W.4 and also had drawn the rough sketch-Ex.P.9. He has arrested the accused on 9.2.1998 at 7.00 am and recorded his confession statement. Ex.P.4 is the admissible portion of the confession statement of the accused. On the basis of the confession statement the accused had taken P.W.9 and the other witnesses near the Brindavan Palli and took out a barber's razor, which was used by him in the crime, from the hidden place and the same was seized by P.W.9. P.W.9 has also identified the razor recovered on the basis of Ex.P.4-confession as M.O.1 and the accused was sent to judicial remand.

6. P.W.4 also corroborated the evidence of P.W.9 as to the visit of P.W.9 the place of occurrence and prepared mahazar Ex.P.9 in his presence.

7. P.W.5 is the owner of the barber shop by name 'Uthayam Hairlines' at Ottupattarai. According to P.W.5 on 8.2.1995 at about 6.30 pm while he was engaged in his profession the accused entered into his shop and took M.O.1 barber's razor from his table. He would further state that the accused caused incised wound on a person in the gathering. But he has not named P.W.2 as the victim.

8. P.W.6 has also corroborated the evidence of P.W.5. He would state that at the time when the accused entered into the said barber shop he was inside the barber shop and P.W.5 was attending to his needs.

9. P.W.7 is also an ocular witness who corroborates the evidence of P.W.1 and P.W.2 and he is also a witness to the confession statement of the accused along with one Raja. He would depose that M.O.1 was recovered on the basis of Ex.P.4-confession statement of the accused under Ex.P.5 in which he is a witness along with one Raja.

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10. P.W.8 is the Doctor, who had treated P.W.2 after the occurrence at about 7.45 pm at Government Hospital, Coonur, and has issued Ex.P.6-copy of accident register. The Doctor would depose that he could find an injury on the neck of P.W.2 measuring 10 cm X 12 cm with a depth of ½ cm and that through the said injury fascia thyroid cartilage were exposed. He has also examined P.W.1 at 7.50 pm on the same for an abrasion in the right index finger and issued Ex.P.7-copy of accident register.

11. P.W.10 is the Inspector of Police who had succeeded P.W.9. He took up further investigation in this case and examined some more witnesses and recorded their statements and after completing the investigation he has filed charge sheet against the accused on 27.3.1998 under Section 307 and 323 IPC.

12. When incriminating circumstances were put to the accused he denied his complicity with the crime. The accused has not examined any witness on his side but he has marked Ex.D.1-referred report in Cr.No.33/1998, a complaint preferred by the accused against P.W.2 for an offence under Section 75 of the Madras City Police Act r/w 323 IPC for the injury he had sustained on the left eye in the same occurrence.

13. On the basis of the available evidence both oral and documentary the learned trial judge has come to the conclusion that the guilt against the accused under Section 307 and 323 IPC have been proved beyond any reasonable doubt and consequently convicted the accused and sentenced to undergo 7 years RI under Section 307 IPC and also slapped a fine of Rs.500/- with default sentence and the trial Judge has also convicted the accused under Section 323 IPC and levied a find of Rs.500/- with default sentence. Aggrieved by the findings of the learned trial judge the accused has preferred this appeal.

14. Now the point for determination in this appeal is whether the conviction and sentence under Section 307 IPC as well as 323 IPC by the learned trial judge against the accused is sustainable for the reasons stated in the memorandum of appeal?

15. The Point:-

15(a) When the appeal was taken up for hearing the learned counsel appearing for the appellant/accused would submit that he is going to argue only in respect of the sentence alone and not on merits. The learned counsel for the appellant would contend that offence under Section 307 IPC has not been made out and if at all the accused is liable to be punished he shall be punished only under Section 324 IPC. In support of his contention the learned counsel focused the attention of this Court to the evidence of the Doctor-P.W.8, who has treated P.W.2 soon after the occurrence. P.W.8, the

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doctor, has treated P.W.2 for the injury he had sustained on the neck and issued Ex.P.6-copy of the accident register. In Ex.P.6 the doctor has opined that the injury sustained by P.W.2 is simple in nature.

15(b) The next point urged before this Court by the learned counsel for the appellant/accused is that there was no intention of the accused to cause death to the victim. The prosecution relied on the intimidating words uttered by the accused before committing the occurrence. Even though the intimidating words are spoken to by P.W.2 and also stated in Ex.P.2 the same was not corroborated by another injured witness P.W.1. According to P.W.1, the accused after pushing him down on the ground went inside the barber shop and took out a barber's razor and inflicted injury on the neck of P.W.2. Under such circumstances, the offence under Section 307 IPC has not been attracted in this case. The offence under Section 323 IPC is also not attracted because the accused has no intention to assault P.W.1. The accused had pushed P.W.1 on the ground. In this context, it is pertinent to note that P.W.1 was under the influence of liquor as per the evidence of the doctor-P.W.8. In the cross-examination P.W.8 would categorically admit that at the time of his examination of P.W.1 he was in intoxicated mood and P.W.1 was semi conscious and that he has not narrated anything about the occurrence. A perusal of Ex.P.7 will go to show that P.W.1 at the time he was examined by P.W.8 was in the influence of alcohol and was sleepy and P.W.8 was informed by one Murali that P.W.1 was assaulted by one person. Definitely P.W.1 would not have been in a position to inform the doctor as to how he sustained injury. The doctor has opined in the cross-exmination that the injury alleged to have been sustained by P.w.1 in the course of occurrence is simple in nature. Under such circumstances, it cannot be said that only due to the push by the accused P.W.1 fell on the ground and sustained simple injury on the index finger.

15(c) The learned Public Prosecutor submitted that an offence under Section 324 is made out in this case. The learned public prosecution would rely on 1993 CRL LJ 2856 (Dharma Pal and others Vs. State of Punjab). The short facts of the above said dictum runs as follows:-

> "There was 8 accused charged for the offence under Section 302 IPC r/w 149 IPC. The trial Court acquitted A1, A8 except the appellants. The appellants were convicted for offence under Section 307 IPC and sentenced to undergo 5 years RI. The High Court also confirmed the conviction under Section 307 IPC. Hence, the appeal before the Honourable Apex Court.
>
> The Honourable Apex Court has held that the offence

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under Section 307 IPC was not made out and has converted the conviction and sentence of the accused to that of under Section 324 IPC thereby setting aside the 5 years RI awarded by the trial Court and confirmed by the 1st appellate Court under Section 307 IPC instead the appellants were convicted and sentenced under Section 324 IPC to undergo one year RI and setoff under Section 428(1) of Cr.P.C was also ordered."

15(d) The learned Public Prosecutor would also rely on 1992 CRL LJ 609 (Ramesh Vs. State of UP), and fairly admit that only an offence under Section 324 has been attracted against the accused and not an offence under Section 307 IPC. In the cited dictum the charge against the accused is that he has caused simple injury with a knife on the back of the neck of the victim. The Doctor has opined that the injury caused by the accued was simple in nature. Under such circumstances, the conviction and sentence under Section 307 IPC r/w 34 IPC against the accused was modified and the accused was convicted and sentenced under Section 324 IPC to pay a find of Rs.3,000/- and it was further ordered by the Honourable Apex Court that the said fine of Rs.3,000/- is to be awarded as compensation to the complainant under Section 357(1) of Cr.P.C.

15(e) So following the above principles of law laid down by the Honourable Apex Court, I am of the view that the accused is liable to be convicted only under Section 324 IPC in stead under Section 307 IPC. Point is answered accordingly.

16. In the result, the appeal is dismissed, but the sentence alone is modified. The accused is convicted under Section 324 IPC and sentenced the term which he had already undergone and a fine of Rs.5,000/- in default to undergo three months simple imprisonment. The entire fine amount is ordered to be given as compensation to P.W.2 under Section 357(1) of Cr.P.C. The appellant is acquitted against the charges under Section 323 IPC and the fine amount paid by him under Section 307 IPC as well as under Section 323 IPC are to be returned to the accused.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

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ssv

To

1.The Sessions Judge,
Nilgiris at Udagamandalam.

2.The Superintendent of Police,
Central Prison, Coimbatore.

3.The Public Prosecutor,
High Court, Madras.

4.The Inspector of Police,
Coonur Police Station,
Nilgiris District.

5.The District Collector,
Nilgiris.

6.The Director General of Police,
Mylapore, Chennai-4.

+1cc to Mr.N.Praghasam, Advocate Sr 14633

KM (CO)
km/20.3.

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